IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 04..11..2006

Coram

The Hon'ble Mr. Justice K.CHANDRU

W.P. Nos.15525 and 23474 of 2004

W.P.No.15525 of 2004:

G.Anburaja .. Petitioner

vs.

1. The Presiding Officer
Central Government Industrial Tribunal
-cum-Labour Court
SasthriBhavan, Chennai

2. Assistant General Manager
Region IV
State Bank of India
No.43 Moore Street
Chennai .. Respondents

W.P.No.23474 of 2004:

Assistant General Manager
Region IV
State Bank of India
Chennai .. Petitioner

vs.

1. The Presiding Officer
Central Government Industrial Tribunal
-cum-Labour Court
Block No.1
SasthriBhavan
Haddows Road, Chennai

2. G.Anbu Raja .. Respondents

Petitions filed under Article 226 of the Constitution of India seeking for issue of writ of Certiorarified Mandamus and for writ of Certiorari respectively for the reasons stated therein.

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For Petitioner : Mr.R.Kamatchi Sundaresan
in W.P.No.15525 of 2004 & for Mr.Balan Haridas
R2 in W.P.No.23474 of 2004

For Respondent 2 : Mr.K.S.Sundar
in W.P.No.15525 of 2004 &
Petitioner in W.P.No.23474 of 2004

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C O M M O N O R D E R

W.P.No.15525 of 2004 is filed by the employee of the State Bank of India and W.P.No.23474 of 2004 is filed by the State Bank of India challenging the Award dated 11.11.2003 passed by the Central Government Industrial Tribunal - cum - Labour Court, Chennai, in I.D.No.338 of 2001. In the operative portion of the Award impugned in these writ petitions, the Tribunal gave the following directions:

> "In view of the above, I find that this preliminary issue is to be answered in favour of the petitioner. Therefore, I find the order of dismissal passed by the Respondent / Management State Bank of India against the petitioner Sri.G.Anburaja is to be set aside. Ordered accordingly. At the same time, liberty is given to the Respondent / Management State Bank of India to proceed with the case against the petitioner Sri.G.Anburaja in accordance with law."

While the Bank is aggrieved about the finding regarding setting aside of the dismissal order made in favour of the employee, the employee was aggrieved against the liberty given to the Bank to proceed with the case against the employee in accordance with law. Therefore, both the writ petitions were heard together.

2. It is seen from the records that the petitioner in W.P.No.15525 of 2004 (hereinafter referred to as 'the petitioner employee') was placed under suspension by order dated 12.10.1992 passed by the petitioner in W.P.No.23474 of 2003 (hereinafter referred to as 'the Bank Management') and was given a memo to show cause and an enquiry was conducted in respect of five charges based upon several transactions. The sum and substance of the allegation against the employee was that he has falsified the records and made spurious credit

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entries in various SB Accounts and withdrew the amounts in his favour and by committing such acts of misappropriation, forgery and making spurious entries in the Bank's records resulting in a financial loss, he has been prejudicial to the interests of the Bank amounting to gross misconduct in terms of paragraphs 521 – 4 (j) of the Sastry Award.

3. An enquiry was conducted in respect of the charge sheet dated 26.10.1992 by the Enquiry Officer. Before the Enquiry Officer, the petitioner employee admitted all the charges. Only in respect of Charge No.3, he has stated that he did not forge the initials of any of the officials but only authenticated the entries. While the Bank Management produced the documentary evidence in respect of the transaction, since the employee himself admitted the charges, it was held by the Enquiry Officer that the charges need not be proved by any oral evidence. Before the Enquiry Officer, the petitioner employee had stated the circumstances under which he was forced to commit the acts for which he was charge sheeted. In the light of the same, the Enquiry Officer found the petitioner employee guilty of charges 1, 2, 4 and 5. Only in respect of charge No.3, he has held that the charge of forgery has not been proved and the Bank Management has not taken steps to prove the charge of forgery. But he has not initialed the entries in respect of charge No.3 and, therefore, he is partially guilty of the same for falsification of records but not for forgery.

4. The employee also wrote a letter dated 23.9.1992 marked as Ex.P.16 wherein he has disowned having paid the amounts to the Bank Management by way of repayment of the loss caused by him. In further letter dated 07.01.1993 marked as Ex.P.18, he had stated that he has already accepted his guilt of withdrawing a sum of Rs.1,10,600/- and since he has already made good the loss, he should be allowed to continue in service. He has also stated that his father died in a road accident during 1981 and he had three brothers and four sisters and since he had to take care of them and his mother, who was affected by heart problems, he stopped his education in the middle and joined the Bank on 21.9.1983 to shoulder the burden of maintaining the family and for the purpose of conducting his sister's marriage, he required some additional amount. He has further stated that considering his strenuous service, he may be let off without imposing any penalty. He had also signed a Power of Attorney dated 30.9.1992, which is marked as P.Ex.34, giving the power to the Bank to sell his house property. He has sent a further letter dated 29.9.1992, which is marked as P.Ex.35, creating equitable mortgage in favour of the Bank Management. On the basis of the findings given by the Enquiry Officer holding the petitioner employee guilty of four charges and the other charge

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partially proved, he was supplied with the minutes of the enquiry proceedings by the Bank Management vide letter dated 24.5.1993 asking him to give his explanation. The employee, on receipt of the said findings, submitted an explanation dated 09.6.1993. For the first time, the petitioner employee took the stand that his voluntary action of making good the amount cannot be held against him and that his acceptance cannot amount to proof of misconduct.

5. The Disciplinary Authority issued a show cause notice dated 18.6.1993 to the petitioner employee stating that he disagreed with the Enquiry Officer with reference to Charge No. 3 and he was of the opinion that all the five charges were proved against him and with a view to inflict the punishment of 'Dismissal without notice', he issued show cause notice and also gave an opportunity for personal hearing on 16.7.1993. Subsequently, the Disciplinary Authority gave a personal hearing on 16.7.1993 and the petitioner employee participated in the same and gave a written submission dated 16.7.1993. It was thereafter, he was dismissed by an order dated 23.8.1993. As against the said order of dismissal, the petitioner employee preferred an appeal dated 13.10.1993 to the Deputy General Manager, State Bank of India, Zonal Office, Madras. Even the Appellate Authority gave a personal hearing on 31.12.1993 and by an order dated 17.01.1994, he independently considered the evidence and rejected the appeal preferred by the employee.

6. Aggrieved at the same, the employee raised dispute under Section 2A of the Industrial Disputes Act 1947 (hereinafter referred to as 'the I.D. Act') before the Assistant Labour Commissioner, which culminated in an order of reference made to the first respondent Tribunal. The Central Government, Ministry of Labour, vide Notification dated 07.12.2000 referred the dispute to the Tribunal, viz., Central Government Industrial Tribunal - cum - Labour Court, Madras, for adjudication, which is extracted below:

> "Whether the dismissal of Shri G.Anburaja by the management of State Bank of India is legal and justified? If not, to what relief is the workman entitled?"

7. Before the Tribunal, the petitioner employee filed a claim statement dated 07.3.2001 and the Bank Management filed a counter statement dated 07.8.2002. The Tribunal took the matter in I.D.No.338 of 2001 and after hearing the learned counsel for the parties, framed a preliminary issue, which is extracted below:

> "Whether an opportunity was to be provided in this case by the Disciplinary Authority, when the Disciplinary Authority disagreed

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with the findings recorded by the Enquiry Officer in respect of charge No.3?"

8. Before the Tribunal, both the sides prayed that the preliminary issue regarding the domestic enquiry conducted by the Bank can be decided. Therefore, the Tribunal heard the parties on the preliminary issue, viz., whether the employee was given opportunity by the Disciplinary Authority since he has disagreed with certain findings of the Enquiry Officer. While the employee relied upon the decision of the Supreme Court reported in 1998 (7) SCC 84 [PUNJAB NATIONAL BANK vs. KUNJ BEHARI MISRA], the Bank Management contended that since no prejudice was caused to employee, it will not vitiate the proceedings initiated by the Bank. On the basis of the arguments made by the parties, the Tribunal held that since the Disciplinary Authority did not grant opportunity to the employee, he disagreed with reference to the finding regarding charge No.3 by the Enquiry Officer and, therefore, held that the order passed by the Bank Management must be set aside. Further, the Tribunal also gave liberty to the Bank Management to proceed with the case against the petitioner employee in accordance with law. Aggrieved at the said Award passed by the Tribunal, both the employee and the Bank have come forward with the present writ petitions.

9. W.P.No.15525 of 2004 was admitted on 08.6.2004 and interim stay was granted in W.P.M.P.No.18426 of 2004. W.P.No.23474 of 2004 was admitted on 17.8.2004 and interim stay was granted in W.P.M.P.No.23428 of 2004 and a petition in W.V.M.P.No.1369 of 2004 was filed by the petitioner employee for vacating the stay granted W.P.M.P.No.23428 of 2004.

10. When the Miscellaneous Petitions came up for hearing, the main writ petitions themselves were taken up for hearing. I have heard the arguments of Mr.Kamatchi Sundaresan, appearing for Mr.Balan Haridas, learned counsel for the employee as well as the arguments of Mr.K.S.Sundar, learned counsel appearing for the Bank and have also perused the records.

11. This is a strange order passed by the Tribunal. What was argued and decided by the Tribunal was only the preliminary issue regarding the nature of domestic enquiry conducted against the petitioner employee. On the contrary, the Tribunal has passed a final Award without deciding the merits of the case. By virtue of Section 10(4) of the I.D. Act, when the appropriate Government was satisfied with the points of dispute for adjudication, the Tribunal should confine its adjudication to those points and the matters incidental thereto. Section 10(4) of the I.D. Act reads as follows:

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> "Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court, or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto"

By not deciding the issue of dismissal of the petitioner employee and further relegating the conduct of further enquiry to the Bank, the issue has been kept open further thereby indicating that the Tribunal has not kept the jurisdiction vested on it in mind.

12. In this context, it is relevant to refer to the decision of the Supreme Court reported in (1973) 1 SCC 813 [THE WORKMEN OF M/S FIRESTONE TYRE AND RUBBER CO. OF INDIA (PVT.) LTD. vs. THE MANAGEMENT AND OTHERS] wherein while interpreting Section 11-A of the I.D. Act, the Supreme Court laid down certain guidelines to be followed by the adjudicating authorities. While interpreting the proviso to Section 11-A, the Court observed as follows:

> "48-49. We are not inclined to accept the above contention of Mr Deshmukh. The Proviso specifies matters which the Tribunal shall take into account as also matters which it shall not. The expression "materials on record", occurring in the Proviso, in our opinion, cannot be confined only to the materials which were available at the domestic enquiry. On the other hand, the "materials on record" in the Proviso must be held to refer to materials on record before the Tribunal. They take in—
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> "(1) the evidence taken by the management at the enquiry and the proceedings of the enquiry, or
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> (2) the above evidence and in addition, any further evidence led before the Tribunal, or
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> (3) evidence placed before the Tribunal for the first time in support of the action taken by an employer as well as the evidence adduced by the workmen contra."

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> The above items by and large should be considered to be the "materials on record" as specified in the Proviso. We are not inclined to limit that expression as meaning only that material that has been placed in a domestic enquiry. The Proviso only confines the Tribunal to the materials on record before it as specified above, when considering the justification or otherwise of the order of discharge or dismissal. It is only on the basis of these materials that the Tribunal is obliged to consider whether the misconduct is proved and the further question whether the proved misconduct justifies the punishment of dismissal or discharge. It also prohibits the Tribunal from taking any fresh evidence either for satisfying itself regarding the misconduct or for altering the punishment. From the Proviso it is not certainly possible to come to the conclusion that when once it is held that an enquiry has not been held or is found to be defective, an order reinstating the workman will have to be made by the Tribunal. Nor does it follow that the Proviso deprives an employer of his right to adduce evidence for the first time before the Tribunal."

13. While dealing with the contention that in case of no enquiry or defective enquiry, the Tribunal cannot order directly reinstatement without completely answering the reference. The relevant portion in paragraph 32 from the above said judgment is extracted below:

> "32. From those decisions, the following principles broadly emerge:
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> (4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is

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open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

This aspect has not been kept in mind by the Tribunal while passing the Award.

14.1. On the contrary, Mr.Kamatchi Sundaresan, learned counsel appearing for the employee, contended that since the Bank Management had not sought for permission to lead evidence at the earliest stage, they may not be allowed to let in evidence afresh and hence, the Tribunal was forced to pass the Award impugned in these writ petitions.

14.2. For this purpose, the learned counsel relied upon the judgment of the Supreme Court reported in (1979) 3 SCC 371 [SHANKAR CHAKRAVARTI vs. BRITANNIA BISCUIT CO. LTD.] to contend that the employer Bank had not made any request in his written statement or by way of application during the pendency of the proceedings to lead evidence in case the enquiry is found to be defective. This judgment has been subsequently considered by the Supreme Court in its decision reported in (2001) 5 SCC 433 [KARNATAKA STATE ROAD TRANSPORT CORPORATION vs. LAKSHMIDEVAMMA (SMT) AND ANOTHER] where the entire case laws have been summed up. In that

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judgment, the Supreme Court has approved the reasoning found in the decision reported in (1983) 4 SCC 491 [SHAMBHU NATH GOYAL vs. BANK OF BARODA]. As per this judgment, the Bank Management had to exercise its right of leading fresh evidence at the first available opportunity and not any time during the proceedings before the Tribunal.

14.3.Once an enquiry is set aside in its entirety and if no fresh evidence is let in, then the question whether the Management is entitled to rely upon the records relating to the domestic enquiry came up for consideration by the Supreme Court in its decision reported in (1999) 1 SCC 517 [NEETA KAPLISH vs. PRESIDING OFFICER, LABOUR COURT AND ANOTHER] and the Supreme Court in paragraphs 26 and 27 of the judgment observed as follows:

> "26. Learned counsel for the appellant (sic respondent) contended that in spite of the direction by the Labour Court to the respondent-Management to lead evidence, it was open to the Management to rely upon the domestic enquiry proceedings already held by the Enquiry Officer, including the evidence recorded by him, and it was under no obligation to lead further evidence, particularly as the Management was of the view that the charges, on the basis of the evidence already led before the Enquiry Officer, stood proved. It was also contended that under Section 11-A, the Labour Court had to rely on the "materials on record" and since the enquiry proceedings constituted "material on record", the same could not be ignored. The argument is fallacious.
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> 27. The record pertaining to the domestic enquiry would not constitute "fresh evidence" as those proceedings have already been found by the Labour Court to be defective. Such record would also not constitute "material on record", as contended by the counsel for the respondent, within the meaning of Section 11-A as the enquiry proceedings on being found to be bad, have to be ignored altogether. The proceedings of the domestic enquiry could be, and were in fact, relied upon by the Management for the limited purpose of showing at the preliminary stage that the action taken against the appellant was just and proper and that a full opportunity of hearing was given to her in consonance with

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> the principles of natural justice. This contention has not been accepted by the Labour Court and the enquiry has been held to be bad. In view of the nature of objections raised by the appellant, the record of enquiry held by the Management ceased to be "material on record" within the meaning of Section 11-A of the Act and the only course open to the Management was to justify its action by leading fresh evidence as required by the Labour Court. If such evidence has not been led, the Management has to suffer the consequences."

14.4. Therefore, the learned counsel for the employee submits that under these circumstances, the direction of the Tribunal allowing the Bank to conduct fresh enquiry may not be proper and that portion of the Award should be set aside.

15.1. Per contra, Mr.K.S.Sundar, learned counsel appearing for the Bank Management stated that the finding of the Tribunal that the enquiry was vitiated was contrary to the materials on record and the decisions relied on by the Tribunal in this regard, viz., the judgment of the Supreme Court reported in (1998) 7 SCC 84 (cited supra) followed by the Supreme Court in its decision reported in (2003) 2 SCC 449 [STATE BANK OF INDIA AND OTHERS vs. K.P.NARAYANAN KUTTY] have no application to the facts and circumstances of the present case. The learned counsel stated that the judgment in Punjab National Bank case (cited supra) holding that if the Disciplinary Authority disagreed with the findings of the Enquiry Officer then an opportunity should be given cannot be mechanically applied.

15.2. In Punjab National Bank case, while interpreting the Regulation 6 of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977, the Supreme Court, in paragraphs 18 and 19 of the judgment, observed as follows:

> "18. Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to

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be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar case[4].

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

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15.3. According to the learned counsel, this was followed in the subsequent judgment of the Supreme Court reported in the State Bank of India's case (cited supra) and also referred to by the Tribunal in the impugned Award more particularly, in paragraph 6, it was observed as follows:

"It was also contended on behalf of the appellants that the High Court committed an error in setting aside the order of dismissal when it was not shown that any prejudice was caused to the respondent by not giving an opportunity to him by the disciplinary authority. In this regard the learned counsel cited a decision of this Court in Union Bank of Inida v. Vishwa Mohan (1998 (3) L.L.N. 90). As already noticed above, before the High Court both the parties concentrated only on one point, namely, the effect of not providing an opportunity by the disciplinary authority. When the disciplinary authority disagreed with some findings of the enquiry officer. It was also not shown by the appellants before the High Court that no prejudice was caused to the respondent in the absence of providing any opportunity by the disciplinary authority. The aforementioned case of Vishwa Mohan is of no help to the appellants. The learned counsel invited our attention to Para 9 of the said judgment. As is evident from the said paragraph this Court having regard to the facts of that case, taking note of the various acts of serious misconduct, found that no prejudice was caused to the delinquent officer. In para 19 of the judgment in Punjab National Bank Case, extracted above, when it is clearly stated that the principles of natural justice have to be read into regulation 7(2) (rule 50(3) (ii) of State Bank of India (Supervising Staff) Service Rules, is identical in terms applicable to the present case) and the delinquent officer will have to be given an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer, we find it difficult to accept the contention advanced on behalf of the appellants that unless it is shown that some prejudice was caused to the respondent, the order of dismissal could not be set aside by the High Court."

15.4. However, once again, the matter came to be considered by the Supreme Court in its decision reported in (2003) 4 SCC 557 [CANARA BANK AND OTHERS v. DEBASIS DAS AND OTHERS]. In the said judgment the Supreme Court while agreed with the conclusions made in the Punjab National Bank case (cited supra), "useless formality theory" was expounded and the relevant portions in paragraphs 23 and 24 are extracted below:

> "23. As was observed by this Court we need not go into "useless formality theory" in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned counsel for the

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appellants, unless failure of justice is occasioned or that it would not be in public interest to dismiss a petition on the fact situation of a case, this Court may refuse to exercise the said jurisdiction (see Gadde Venkateswara Rao v. Govt. of A.P.). It is to be noted that legal formulations cannot be divorced from the fact situation of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case post-decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing. (See Charan Lal Sahu v. Union of India.)

24. Additionally, there was no material placed by the employee to show as to how he has been prejudiced. Though in all cases the post-decisional hearing cannot be a substitute for pre-decisional hearing, in the case at hand the position is different."

. . .

15.5. Further, the Supreme Court in the judgment reported in (1998) 4 SCC 310 [UNION BANK OF INDIA vs. VISHWA MOHAN] dealt with a similar question at page 314 in paragraph 9, which is extracted below:

"9. We are totally in disagreement with the above-quoted reasoning of the High Court. The distinction sought to be drawn by the High Court that the first charge-sheet served on the respondent related to the period when he was a clerk whereas the other three charge-sheets related to the period when he was promoted as a bank officer. In the present case, we are required to see the findings of the enquiry authority, the order of the Disciplinary Authority as well as the order of the Appellate Authority since the High Court felt that the charges levelled against the respondent after he was promoted as an officer were not of a serious nature. A bare look at these charges would unmistakably indicate that they relate to misconduct of a serious nature. The High Court also committed an error when it assumed that when the respondent was promoted as a bank officer, he must be having a good report otherwise he would not have been promoted. This finding is totally

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unsustainable because the various acts of misconduct came to the knowledge of the Bank in the year 1989 and thereafter the first charge-sheet was issued on 17-2-1989. The respondent was promoted as a bank officer sometime in the year 1988. At that time, no such adverse material relating to the misconduct of the respondent was noticed by the Bank on which his promotion could have been withheld. We are again unable to accept the reasoning of the High Court that in the facts and circumstances of the case "it is difficult to apply the principle of severability as the charges are so inextricably mixed up". If one reads the four charge-sheets, they all relate to the serious misconduct which includes taking bribe, failure to protect the interests of Bank, failure to perform duties with utmost devotion, diligence, integrity and honesty, acting in a manner unbecoming of a bank officer etc. In our considered view, on the facts of this case, this principle has no application but assuming that it applies yet the High Court has erred in holding that the principle of severability cannot be applied in the present case. The finding in this behalf is unsustainable. As stated earlier, the appellant had in his possession the enquiry report/findings when he filed the statutory appeal as well as the writ petition in the High Court. The High Court was required to apply its judicial mind to all the circumstances and then form its opinion whether non-furnishing of the report would have made any difference to the result in the case and thereupon pass an appropriate order."

15.6. However, in the judgment reported in (2004) 8 SCC 653 [J.A.NAIKSATAM vs. PROTHONOTARY & SENIOR MASTER, HIGH COURT OF BOMBAY AND OTHERS], the Supreme Court once again reiterated the principle laid down in Punjab National Bank case in the context of the Bombay High Court (Discipline and Appeal) Rules more particularly, Rule No.8 (4)(i)(a), the Supreme Court, approving the decision of the Punjab National Bank case on the fact situation, held in paragraphs 6 and 7 as follows:

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the counsel for the appellants contended that after the receipt of the report from the enquiry officer, the disciplinary authority should have given notices to the appellants with its tentative conclusion and an opportunity be given to the delinquent before the report of the enquiry officer is reversed by the disciplinary authority. It was also argued that the appellants should have been heard by the disciplinary authority before such a decision was rendered. Even though the rule as such does not contemplate giving an opportunity to the appellant delinquents before the disciplinary authority takes a final decision to disagree with the reasons given by the enquiry officer, such a provision could be read into the rule but even then the appellants cannot be heard to say that there shall be a personal hearing by the disciplinary authority. In the instant case, the appellants were given a copy of the tentative decision of the disciplinary authority and the appellants furnished detailed explanation and we are of the view that the principles of natural justice have been fully complied with and we do not find any infraction of rules or infirmity in the said decision.

7. The counsel further contended that from the tentative decision it could be spelt out that the disciplinary authority had already taken a final decision in the mater and the details have been given therein and the opportunity which was given to the appellants was only an exercise in futility. We are not inclined to accept this contention. It is true that the disciplinary authority gave its reasons for disagreement with the report of the enquiry officer and the appellants had given their full-fledged explanation and if at all the disciplinary authority gave detailed tentative decision before seeking

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explanation from the appellants, it enabled them to give an effective representation and the principles of natural justice were fully complied with and it cannot be said that the appellants were not being heard in the matter."

16. Now in the light of the aforesaid decisions, if one looks into the materials placed before the Tribunal, it is very clear that the petitioner employee accepted the charges and also made good the loss suffered by the Bank Management and has also given a letter as well as Power of Attorney creating equitable mortgage in favour of the Bank. He raised a protest only in the tail end. Even the Disciplinary Authority, who disagreed with the findings of the Enquiry Officer, gave an opportunity of hearing to the petitioner employee to appear before him on 16.7.1993. It was thereafter the order imposing punishment of dismissal was passed against him. Further, the employee preferred an appeal in terms of paragraph 521 - 10(a) of the Sastry Award before the Appellate Authority. Even though he raised a ground of non-furnishing the Enquiry Report before disagreeing with the finding of the Enquiry Officer, the appellate authority also granted opportunity of personal hearing to the petitioner on 31.12.1993. Therefore, as can be seen from the records, even before the Disciplinary Authority accepted the findings of the Enquiry Officer, the Enquiry Report was given to him by a covering letter dated 24.5.1993. Therefore, every principle of natural justice has been followed and the provisions of the Sastry Award and Desai Award have been kept in mind.

17. The only grievance raised by the petitioner was highly legalistic, viz., that the Disciplinary Authority, while accepting the findings of the Enquiry Officer, disagreed with the finding with regard to charge No.3 and held that also to be proved. It must be stated here that the Enquiry Officer himself found the employee guilty of charge Nos.1, 2, 4 and 5 and even in respect of charge No.3, he had merely indicated that the charge of forgery was not proved. But at the same time, the initials made by the petitioner employee in the document was found proved. If at all the petitioner employee can have a grievance, it can only be in respect of charge No.3 where also the petitioner employee cannot have any defence in the context of his not raising any objection in the enquiry. Therefore, this is a fit case where the "empty formality theory" as mentioned in the Vishwa Mohan's Case can have full operation. In any event, the petitioner employee had the luxury of having personal hearing before the Disciplinary Authority and another personal hearing before the Appellate Authority when his appeal was heard. It was thereafter he has approached the Tribunal and the Tribunal,

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without reference to all these decisions, was simply carried away by the submission made by the learned counsel for the employee and solely relied upon the judgment of the Punjab National Bank case without considering the legal issue in the backdrop of the present case. The petitioner employee cannot have the luxury of appeal and personal hearings and yet came before the Tribunal to contend that he was seriously prejudiced by the action of the Disciplinary Authority on the sole ground that he disagreed with the findings of the Enquiry Officer in respect of charge No.3 alone. Even otherwise, the impugned Award of the Tribunal cannot be sustained because in the present case, the Tribunal has set aside the entire enquiry only on the plea that the Disciplinary Authority disagreed with the findings of the Enquiry Officer in respect of charge No.3 alone. In which case, the Tribunal should have held the enquiry fair and proper and should have held that it would not go into the issue relating to charge No.3 solely on the basis of the conclusions reached by the Disciplinary Authority or the Enquiry Officer, but will look into the evidence uninfluenced by the findings given by the Officers of the Bank.

18. In fact, the Tribunal in the present case is adjudicating the issue in terms of Section 11-A of the I.D. Act and Section 11-A has been amply explained by the Supreme Court in the Firestone Case (cited supra). In paragraph 36 of the judgment, the Court held as follows:

> "36. We will first consider cases where an employer has held a proper and valid domestic enquiry before passing the order of punishment. Previously the Tribunal had no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by this Court in Indian Iron & Steel Co. Ltd. case existed. The conduct of disciplinary proceedings and the punishment to be imposed were all considered to be a managerial function with which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an inference of victimisation of unfair labour practice. This position, in our view, has now been changed by Section 11-A. The words "in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in

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> the domestic enquiry and satisfy itself whether the said evidence relied on by an employer establishes the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in Indian Iron & Steel Co. Ltd. case, can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct; but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so; and now it is the satisfaction of the Tribunal that finally decides the matter."

19. At the maximum, the Tribunal should have held that it will not accept the findings of the Disciplinary Authority in respect of charge No. 3 but should have proceeded to consider the case in respect of the materials placed before it by the Bank Management and there is no attack by the petitioner employee in respect of the procedural aspect of conducting of enquiry as well as the findings of the Enquiry Officer in respect of charge Nos.1, 2, 4 and 5. However, this Court feels that even the question of the Disciplinary Authority disagreeing with the findings of the Enquiry Officer, cannot be held to be a vitiating factor solely on the basis of the judgment of the Punjab National Bank case. The said judgment has been explained in two decisions of the Supreme Court subsequently which are referred to above.

20. Further, in the present case, the petitioner employee had the luxury of two personal hearings, one before the Disciplinary Authority and the second before the Appellate Authority and, therefore, the findings of the Tribunal in respect of the preliminary issue cannot be upheld. The Tribunal ought to have allowed the parties to argue on the merits of the case and should have come to the conclusion on the charges held to have been proved against the petitioner employee. Instead of discharging its jurisdiction conferred upon it under Section 10(4) of the I.D. Act, the Tribunal abdicated its power and remanded the matter to the Bank Management to deal with further, which has resulted in the Tribunal not having determined the issue thereby making the issue to reach a final conclusion.

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21. In the light of the above discussion, both the writ petitions are allowed and the impugned Award dated 11.11.2003 made in I.D.No.338 of 2001 is quashed. In the light of the conclusion reached above, the Tribunal is directed to restore I.D.No. 338 of 2001 on its file and proceed to decide the issue of dismissal of the petitioner employee on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order after giving opportunity to both the parties. Consequently, W.P.M.P.No.18426 of 2004 and W.P.M.P.Nos.28428 of 2004, 23217 of 2005 and 1369 of 2005 in W.P.No.23474 of 2004 shall stand closed. However, the parties are directed to bear their own costs.

gri

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court, Shastri Bhavan
Chennai

2. The Assistant General
Registrar IV, SBI
43 Moore Street,
Chennai

+ one cc to Mr. K.S. Sundar, Advocate sr no. 52181
+ one cc to Balan Haridoss, Advocate sr no. 52172

KSJ(CO)
NM(23.11.2006)

W.P. Nos.15525 and 23474 of 2004

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